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10/574,813	04/04/2006	Maartje Ouwendijk-Vrijenhoek	C4331C	3668

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EXAMINER	
DELCOTTO, GREGORY R	

ART UNIT	PAPER NUMBER
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/574,813	OUWENDIJK-VRIJENHOEK ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 July 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-4 are pending. Claims 5-8 have been canceled. Applicant's amendments and arguments filed 7/28/08 have been entered.

Applicant's election without traverse of Group I, claims 1-4, in the reply filed on 7/28/08 is acknowledged.

Claim 5 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/28/08. Note that, claim 5 has been canceled.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 4/29/08 have been withdrawn:

The rejection of claims 1-4 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/559963 in view of WO98/39406 has been withdrawn due to the abandonment of 10/559963.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/39406.

'406 teaches laundry or cleaning composition containing a catalytically effective amount of a transition metal bleach catalyst and at least about 0.1% of one or more laundry or cleaning adjunct materials. See Abstract. In preferred embodiments, the compositions contain 0.1% of a primary oxidant and at least about 0.001% of a bleach-promoting adjunct. See page 21, lines 1-20. Antioxidants may be in the compositions such as 2,6-di-tert-butyl-4-hydroxytoluene, ascorbic acid, etc. See page 88, lines 1-30.

The compositions may be in any form such as a liquid, granular, tablet, etc. Liquid detergent compositions can contain water and other solvents as carriers in amounts from 5 to 90% by weight. The detergent compositions will preferably be formulated such that during use in aqueous cleaning operations, the wash water will have a pH of between about 6.5 and 11. Liquid dishwashing product formulations preferably have a pH between about 6.8 and 9.0 and laundry products are typically at pH 9 to 11. See page 134, lines 10-35. Perfumes may also be used in the compositions including ketones, aldehydes, etc. Finished perfumes typically comprise from about 0.01% to about 2% by weight of the detergent compositions and individual perfumery ingredients can comprise from about 0.0001% to about 90% of a finished perfume composition. Suitable perfumes include hexyl cinnamic aldehyde, geraniol, etc. See page 130, line 30 to page 132, line 15.

'406 does not teach, with sufficient specificity, a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as geraniol, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as geraniol, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '406 suggest a composition

having the specific pH containing a transition metal bleach catalyst, a perfume such as geraniol, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Note that, the Examiner asserts that the broad teachings of '406 would suggest compositions having the same enhanced bleaching properties as recited by the instant claims because '406 teach compositions containing the same components in the same amounts as recited by the instant claims.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adriannse et al (US 2002/0198127) in view of WO98/34906.

Adriannse et al teach an aqueous liquid cleaning composition having a pH of at lest 7, preferably from 7 to 10, comprising from 1% to 90% by weight of surfactant, a proteolytic enzyme and a primary stabiliser therefor, the composition further comprising an organic substance which forms a complex with a transition metal, the complex being capable of catalysing bleaching of a substrate by atmospheric oxygen. See Abstract. In order for a composition according to the invention to have bleaching performance, it is not necessary for it to contain a bleach or bleach system. See para. 129. The compositions can also further comprise a wide variety of optional ingredients which are suitable for use in liquid laundry compositions.

Adriaanse et al do not teach the use of a perfume such as geraniol or a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as geraniol, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

'406 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume such as geraniol in the composition taught by Adriaanse et al, with a reasonable expectation of success, because '406 teaches the use of geraniol in a similar cleaning composition and further, Adriaanse et al teach the use adjunct ingredients which would encompass perfume materials since perfumes are conventionally used in laundry detergent compositions and notoriously well-known to those of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as geraniol, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Adriaanse et al in combination with '406 suggest a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as geraniol, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Note that, the Examiner asserts that the broad teachings of Adriaanse et al in combination with '406 would suggest compositions having the same enhanced bleaching properties as recited by the instant claims because Adriaanse et al in combination with '406 suggest compositions containing the same components in the same amounts as recited by the instant claims.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/39406 as applied to claims 1-3 above, and further in view of Adriaanse et al (US 2002/0198127).

'406 is relied upon as set forth above. However, '406 does not teach the use of the specific bleaching catalyst in addition to the other requisite components of the composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the specific bleach catalyst as recited by instant claim 4 in the composition taught by '406, with a reasonable expectation of success, because Adriaanse et al teach the equivalence of the specific bleach catalyst as recited by instant claim 4 to other bleach catalysts as disclosed by '406 in a similar bleaching compositions.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 and 18 of copending Application No. 10/559781, claims 1-16 of 10/559962, and claims 1-16 of 10/559964. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 and 18 of copending Application No. 10/559781, claims 1-16 of 10/559962, and claims 1-16 of 10/559964 encompass the limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition having the specific pH containing a transition metal bleach catalyst, a perfume, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because claims 1-16 and 18 of copending Application No. 10/559781, claims 1-16 of 10/559962, and claims 1-16 of 10/559964 suggest a composition having the specific pH containing a transition metal bleach catalyst, a perfume, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

With respect to the rejection of the instant claims under 35 USC 103 using WO98/39406 and Adriannse et al in combination with '406, Applicant states that neither '406 or Adriannse et al appears to teach or suggest the problem of the sensitivity of formulations to particular perfume components and that the Examiner has relied upon improper hindsight reasoning in establishing a prima facie case of obviousness. In response, note that, while '406 or Adriannse et al may not teach the use of the recited perfume components for the same reason as Applicant, the Examiner asserts that '406 teaches the use of a perfume such as geraniol, which is recited by the instant claims, in a bleach catalyst containing composition. Additionally, the Examiner asserts that one of ordinary skill in the art clearly would have been motivated to use a perfume such as geraniol in the composition taught by Adriaanse et al, with a reasonable expectation of success, because '406 teaches the use of geraniol in a similar cleaning composition and further, Adriaanse et al teach the use adjunct ingredients which would encompass perfume materials since perfumes are conventionally used in laundry detergent compositions and notoriously well-known to those of ordinary skill in the art. Note that, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. Note that, while there must be motivation to make the claimed invention, there is no requirement that the prior art provide the same reason as the applicant to make the claimed invention. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972). See MPEP 2144. Additionally, in response to applicant's argument that

the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Further, Applicant states that results are given in the present application which demonstrate the criticality of the perfumes as recited by the instant claims. In response, note that, the Examiner asserts that while Applicant has made a broad statement that criticality has been shown in the specification, no specific data has been specifically pointed out or explained by Applicant as to how unexpected and superior results have been demonstrated. Additionally, in addition to the uncertainty as to which examples and embodiments are relied upon, the Examiner asserts that the data presented on pages 20-25 of the instant specification is not commensurate in scope with the claimed invention. For example, the instant claims are open to broad amounts of transition metal bleach catalyst and perfumes while the data presented in the instant specification provides embodiments with only one specific amount of catalyst and perfume which is not commensurate in scope with the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

/G. R. D./
October 27, 2008